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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/772,011	01/29/2001	Nan Feng	JP919990263-US1	9243
7590 Anne Vachon Dougherty 3173 Cedar Road Yorktown Heights, NY 10598			EXAMINER CHOUDHURY, AZIZUL Q	
			ART UNIT 2145	PAPER NUMBER
			MAIL DATE 06/28/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Office Action Summary**

Application No.

09/772,011

Applicant(s)

FENG ET AL.

Examiner

Azizul Choudhury

Art Unit

2145

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 11 April 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1 and 3-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 January 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received:
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

***Detailed Office Action***

This office action is in response to the correspondence received on April 11, 2007.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 and 3-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kenner (US Pat No: 6,112,239).

1. With regards to claims 1, 11 and 20, Kenner teaches, a method (a method is able to be an apparatus and a program) for balancing load among a plurality of mirror servers, wherein a user may select and get access to any one of said plurality of mirror servers within an identical web page (Kenner teaches distributing load amongst distributed mirror servers (column 5, lines 5-19, Kenner)), said method comprising the steps of:
  - a. When said web page is accessed by a client, in response to a user input to establish a session to browse said web page, receiving said web page and a predetermined script at said client (Client-side software is used to determine which server to connect to (column 5, line 60 – column 6, line 3, Kenner), the software is downloaded from the MSP server (column 8, lines

Art Unit: 2145

27-32, Kenner) in an environment that supports downloading in HTTP(column 16, line 60, Kenner). Hence, a browser can be directed to the MSP and a software can be downloaded through a webpage interface);

- b. Automatically executing said script at said client so as to respectively create connections with each of said plurality of mirror servers and measure respective response times (The software can be run automatically (column 8, lines 37-41, Kenner));
- c. Selecting a mirror server having the shortest response time as a selected mirror server to handle the user's next action with said web page during the session (The software runs tests and determines how each mirror site ranks for the client the software is installed in. The appropriate mirror site can then be used to reduce response time (column 5, line 43 – column 6, line 3, Kenner)).

(While Kenner does not specifically disclose that the client-side load balancing software is downloaded through a webpage, Kenner does teach that the client accesses the MSP (the site from where the load balancing software is downloaded) through the Internet (Figure 1, Kenner) and also supports the use of HTTP (column 16, line 60, Kenner). Official notice is hereby taken that it is well known to one skilled in the art, during the time of the invention, that software can be downloaded through HTTP in a network

that uses the Internet since, HTTP is a widely used Internet compliant protocol.)

2. With regards to claim 3, Kenner teaches, the method wherein said automatically executing script comprises the steps of:
  - a. Calling a predetermined engine by said client (The software consists of a configuration utility (column 5, lines 39-40, Kenner)); and
  - b. Executing said script by said engine, comprising creating connections with each of said plurality of mirror servers and measuring respective response times (Tests are performed (column 5, lines 43-60, Kenner)).
3. With regards to claims 4 and 13, Kenner teaches, the method (a method is able to be an apparatus) wherein said executing said script is performed in a multi-thread manner for said plurality of mirror servers (Modern processors and operating systems enable multithreaded execution)
4. With regards to claims 5 and 14, Kenner teaches, the method (a method is able to be an apparatus) further comprising sending the client information to the mirror servers being connected (It is inherent that web browsers send IP information to servers and column 18, lines 20-21, Kenner).

5. With regards to claims 6 and 15, Kenner teaches, the method (a method is able to be an apparatus) wherein said client information includes at least one of IP address, domain name, platform name, platform version, and browser type of said client (It is inherent that web browsers send IP information to servers and column 18, lines 20-21, Kenner).
6. With regards to claims 7 and 16, Kenner teaches, the method (a method is able to be an apparatus) wherein said connections are created through proxies (Figure 1, elements 14 and 18, Kenner).
7. With regards to claims 8 and 17, Kenner teaches, the method (a method is able to be an apparatus) wherein said script can be re-started by said user during said session (User is allowed to re-rerun the utility (column 14, lines 18-19, Kenner)).
8. With regards to claims 9 and 18, Kenner teaches, the method (a method is able to be an apparatus) further comprising comparing respective response times of said plurality of mirror servers (Kenner's design allows for a variety of tests (column 10, line 5 – column 11, line 65, Kenner)).
9. With regards to claims 10 and 19, Kenner teaches, the method (a method is able to be an apparatus) further comprising the steps of:

Art Unit: 2145

- a. Notifying said user of the mirror server having the shortest response time (column 5, lines 52-60, Kenner);
- b. Receiving user input selecting one of said mirror servers as the selected mirror server (column 9, lines 58-63, Kenner); and
- c. Establishing access for the user to the mirror server (column 6, lines 4-50, Kenner).

10. With regards to claim 12, Kenner teaches, the method (a method is able to be an apparatus) wherein said predetermined script is transmitted together with said web page to said client (Client-side software is used to determine which server to connect to (column 5, line 60 – column 6, line 3, Kenner), the software can be downloaded into the client (column 8, lines 27-32, Kenner). The server providing the software can also provide other data (column 8, lines 13-19, Kenner));

11. The official notice and the motivation applied to claim 1 is applicable to claims 3-20.

### ***Response to Remarks***

The amendment received on April 11, 2007 has been carefully examined but is not deemed fully persuasive. Claim amendments have been made to claims 1, 11 and 20, to successfully overcome the 112-type rejection. The following are the examiner's response to the applicant's arguments.

The first point of contention addressed by the applicants is that the Kenner art teaches "server-side optimization." However, the applicant has stated within their own arguments that "the delivery site chosen by the configuration utility" (p. 10, 1<sup>st</sup> paragraph of the arguments) and that, "each client is provided with software which includes a configuration utility," (p. 9, last paragraph of the arguments). So the applicant can see that the configuration utility within the client selects the delivery site. This is client-side optimization as claimed.

The second point of contention involves Kenner's teaching of "on-the-fly." Applicant suggests that "on-the-fly" does not teach the traits of "dynamic transmitting and executing of script for measuring response time and selecting a server in response to the client/user accessing the web page." The claim language states that a web page is accessed to download a script. The script/file is then executed automatically and measurements are attained. Based on the measurements, the appropriate mirror server is selected. Kenner teaches that the client-side software used to perform the load balancing (column 5, line 60 – column 6, line 3, Kenner), is downloaded from the MSP server (column 8, lines 27-32, Kenner) in an environment that supports downloading in HTTP (column 16, line 60, Kenner). Hence, a browser can be directed to the MSP and software can be downloaded through a webpage interface. In addition, Kenner teaches how the software automatically runs (column 8, lines 37-41, Kenner) and how the software retrieves web pages (column 5, line 67, Kenner), automatically selecting the appropriate mirror (also called by Kenner, "on-the-fly") (column 6, lines 34-36, Kenner).



The third point of contention involves the claim limitation of "multithreaded execution." The examiner stated that modern processors and operating systems enable multi-threaded execution. The applicant contends that Kenner does not teach such a feature. The examiner however stands by his statement. This is not some conclusion formulated merely by the examiner; it is well known in the art. If applicant is able to find evidence to the contrary, they are welcome to provide such evidence and the examiner will withdraw such a conclusion.

Finally, the applicant contends that the examiner has failed to teach all the claim limitations and that all words in a claim must be considered in judging patentability. The examiner has made diligent efforts to attain a full understanding of the claims. However, responsibilities lie not solely with the examiner. Applicants too must take diligent efforts to ensure that they are attaining a full understanding of the prior arts. It is important to not simply read prior art to attain a literal interpretation but to also attain an understanding of the spirit of the design. The examiner has made such efforts with the specifications of the claimed invention however, claims must be read to ensure they are not open to interpretations not supported by specifications. Keeping such factors in mind, the examiner is convinced that he has made a diligent effort in considering all the words in the claims and has addressed each of the claim limitations.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

Art Unit: 2145

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Azizul Choudhury whose telephone number is (571) 272-3909. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jason Cardone can be reached on (571) 272-3933. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 2145

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

AC

  
JASON CARDONE  
SUPERVISORY PATENT EXAMINER